

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 17-3439 FMO (PJWx)	Date	Sept. 20, 2017
Title	Richard Graff v. CitiMortgage, Inc., <u>et al.</u>		

Present: The Honorable **Fernando M. Olguin, United States District Judge**

Vanessa Figueroa

None Present

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None Present

None Present

**Proceedings: (In Chambers) Order to Show Cause Re: Dismissal**

By order dated July 28, 2017 plaintiff was ordered to show cause, on or before August 4, 2017, why this action should not be dismissed for lack of prosecution for failure to complete service of the summons and complaint as required by Rule 4(m) of the Federal Rules of Civil Procedure.<sup>1</sup> (See Dkt. 17, Court's Order of July 28, 2017 ("OSC")). Plaintiff responded to the OSC, (see Dkt. 22, Reply to Order to Show Cause Re" Dismissal Re: Lack of Prosecution), and while not directly addressing whether defendants Cal-Western Reconveyance Corp. ("Cal-Western") and NBS Default Services ("NBS") have been served with process (see, generally, Dkt. 22, Response), plaintiff requested that he be permitted to file an amended complaint, after which he would serve all defendants. (See id. at 2).

On September 1, 2017, the court granted plaintiff additional time to serve Cal-Western and NBS with the summons and complaint given his pro se status. (See Dkt. 29, Court's Order of September 1, 2017, at 2). The court also granted plaintiff until September 8, 2017, to file a First Amended Complaint. (See id.).

As of the date of this Order, plaintiff has not filed a First Amended Complaint. (See, generally, id.). Due to plaintiff's pro se status, the court will provide plaintiff with one final opportunity to file a First Amended Complaint and effect service of process on Cal-Western and NBS.

Based on the foregoing, IT IS ORDERED THAT:

1. Plaintiff is granted until **October 2, 2017**, to file a First Amended Complaint.

2. The first amended complaint must be labeled "First Amended Complaint," filed in compliance with Local Rule 3-2 and contain the case number assigned to the case, i.e., Case No. CV 17-3439 FMO (PJWx). In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to make his First Amended Complaint complete. Local Rule 15-2 requires that

<sup>1</sup> Unless otherwise indicated, all "Rule" references are to the Federal Rules of Civil Procedure.

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an amended pleading be complete in and of itself without reference to any prior pleading. This is because, as a general rule, an amended pleading supersedes the original pleading. See Ramirez v. Cnty. of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("It is well-established in our circuit that an amended complaint supersedes the original, the latter being treated thereafter as non-existent. In other words, 'the original pleading no longer performs any function[.]'" (citations and internal quotation marks omitted).

3. Plaintiff is cautioned that failure to timely file a First Amended Complaint **shall** result in Cal-Western and NBS being dismissed from this action without prejudice for failure to prosecute and/or failure to comply with a court order. See Fed. R. Civ. P. 41(b); Link v. Wabash R.R. Co., 370 U.S. 626, 629-30, 82 S.Ct. 1386, 1388 (1962).

4. Plaintiff shall effect service of process in compliance with Rule 4 no later than **October 9, 2017**.

5. The Order to Show Cause is hereby continued pending compliance with paragraph one above.

Initials of Preparer 00 : 00  
vdr